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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,409	07/23/2004	Yoshiharu Uehata	10921.235USWO	3948

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P.O. Box 2902
Minneapolis, MN 55402-0902

EXAMINER

REYNOLDS, STEVEN ALAN

ART UNIT	PAPER NUMBER
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3728

MAIL DATE	DELIVERY MODE
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07/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/502,409	Applicant(s) UEHATA, YOSHIHARU	
	Examiner Steven Reynolds	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/29/2008 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-6, 8, 10, 16 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Sleva et al. (US 2003/0038047). Sleva discloses an analysis kit comprising: an analyzer (12) for analyzing a target analyte in a sample; a sampling tool (20) for taking a sample, wherein the sampling tool includes an operating portion and a sampling tip and an adapter housing (10) for holding the analyzer and the sampling tool,

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wherein the adapter housing comprises: a first holding portion (cavity formed by 16) for holding the analyzer and a second holding portion (cavity formed by 18) for holding the sampling tool, wherein the second holding portion includes an upper opening for exposing the operating portion of the sampling tool, and a lower opening for exposing the sampling tip of the sampling tool; the first holding portion includes an upper opening for partly exposing the analyzer, and a side opening (slot formed in 16) communicating with the upper opening of the first holding portion.

Regarding claims 4-6, 8, 10, 16 and 17, Sleva discloses the first holding portion and the second holding portion are separated by a partition wall (holder 16 is considered a partition wall), the partition wall being formed with a cutout (slot at the top edge 16) for communicating an inside of the first holding portion with an inside of the second holding portion; the first and second holding portions are integrally formed as one piece; an article holding portion (26/28) for containing articles used for at least one of the analyzer and the sampling tool, or other items used in conjunction with the sample analysis or the sampling; the article holding portion includes a plurality of containing rooms (26/28); the article holding portion is integrally formed with the main body adapter housing as one piece; the analyzer comprises a blood sugar measuring device; and the sampling tool comprises a lancing device used for piercing a lancing element into skin.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sleva et al. (US 2003/0038047). As described above, Sleva discloses the claimed invention except for the article holding portion being removable. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the article holding portion of Sleva removable in order to protect the articles when they are outside the kit.

7. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sleva et al. (US 2003/0038047) in view of Leenders (US 5,251,800). As described above, Sleva discloses the claimed invention except for the spacer. However, Leenders teaches a holder comprising article holding portions comprising elastic spacers (protrusions 60/90, which are different heights) between an inner surface of the holding

portions and the outer surface of the articles for the purpose of assuring a tight fit of the articles in the holding portions. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the inner surfaces of the first and/or second holding portions of Sleva to have spacers as taught by Leenders in order to assure a tight fit of the articles and to better protect the articles from damage.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 3-6 and 8-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:30am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/
Primary Examiner
AU 3728

/S. R./
Examiner, Art Unit 3728